

considered masterworks of haute couture in the mid-20th Century, embraced by clients that included European aristocracy and Jacqueline Kennedy.

4. Today, under the creative direction of Demna Gvasalia, Balenciaga is famed for its subversive, tongue-in-cheek aesthetic. Recent collections have drawn inspiration from everyday, unremarkable objects, much as Duchamp made a urinal into art and Andy Warhol found beauty in cans of Campbell's soup, Balenciaga's designs transform mundane items into couture.

5. I understand that the plaintiff in this case, City Merchandise, accuses Balenciaga America of selling certain items that allegedly infringe City Merchandise's copyright in a stylized image of the New York City skyline. The Balenciaga items at issue are a shopper's tote bag, hoodie, large and small pouches, and skirt that feature a print of New York City (collectively, the "Balenciaga NYC Tourist Collection").¹

6. The Balenciaga NYC Tourist Collection was first introduced in the late summer of 2017 and was first offered for sale in the United States in November 2017. Inspired by tourist souvenirs, the collection references hot rod and graffiti-style airbrushed imagery.

7. Balenciaga America does not design or manufacture the items in the Balenciaga NYC Tourist Collection. It is my understanding that the items in the Balenciaga NYC Tourist Collection are designed in Paris and are manufactured in Italy.

8. Balenciaga America imports and sells the Balenciaga NYC Tourist Collection in the United States. It has offered the shopper's tote bag, hoodie, and large and small pouches in its own Balenciaga boutiques. It has sold all of the items in the collection at wholesale to high-end retailers such as Barneys New York, Neiman Marcus, Saks Fifth Avenue, and Bergdorf

¹ Plaintiff has also accused a scarf of infringement, but Balenciaga America did not import or sell the scarf in the United States.

Goodman. The retail price for the Balenciaga NYC Tourist Collection ranges from \$650 for the small pouch to \$1,950 for the shopper tote bag.

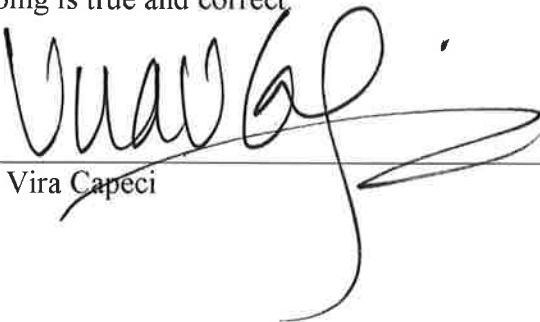
9. By contrast, I understand that the plaintiff's products are offered for sale in souvenir shops and airports, at a price of \$20 for a tote bag to just a few dollars for a coin purse.

10. Balenciaga America first learned of the plaintiff's claims of infringement when it received a demand letter dated June 29, 2018 that was addressed to me. Although Balenciaga America denies the plaintiff's claims of infringement, we took prompt action. In an abundance of caution, we removed the items in the Balenciaga NYC Tourist Collection from our retail boutiques. We have since been holding those items in our inventory in the United States and have no plans to transfer them.

11. Because the items in the Balenciaga NYC Tourist Collection are luxury goods, they are made in limited quantities and there are only a small number of them at issue. We are currently holding a total of 36 items in inventory.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on October 16, 2018
New York, New York



Vira Capeci